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| **Identifying a Restrictive Practice Substitute Decision-maker in residential aged care** |
| General information factsheet |

This factsheet is about identifying a Restrictive Practices Substitute Decision-maker in a residential aged care setting under the *Aged Care Restrictive Practices Substitute Decision-maker Act 2024* (Vic).

## Who should read this factsheet and why?

Aged care residents, their supporters and aged care providers should read this factsheet to understand the following:

* what is a Restrictive Practice Substitute Decision-maker
* who is eligible and not eligible to be a Restrictive Practices Substitute Decision-maker
* what is the process for identifying a Restrictive Practices Substitute Decision-maker
* what are the avenues for dispute
* where can I find additional information

## What is a Restrictive Practices Substitute Decision-maker?

A Restrictive Practices Substitute Decision-maker is someone who can provide **informed consent** to the use of a restrictive practice, when an aged care resident **does not have capacity** to provide **informed consent** for the use of restrictive practices themselves.

A Restrictive Practices Substitute Decision-maker only makes a decision to consent, or not to consent to the use of restrictive practices in a residential aged care home under the *Aged Care Act 2024 (Cth)*.

**For more information see:**

* Factsheet 1: Acting as a Restrictive Practices Substitute Decision-maker in aged care

## Who can be a Restrictive Practices Substitute Decision-maker?

A Restrictive Practices Substitute Decision-maker must:

* be of 18 years of age or over
* have capacity to provide informed consent
* be available, willing and able to provide informed consent.

## Who is not eligible to be a Restrictive Practices Substitute Decision-maker?

A Restrictive Practices Substitute Decision-maker cannot be anyone who:

* is an employee or agent of the residential aged care provider,
* has been involved in the preparation or implementation of the aged care resident’s Behavioural Support Plan,
* is convicted (other than a spent conviction) of committing a crime against the aged care resident,
* someone subject to a family violence intervention order concerning the aged care resident, or
* is not available, willing and able to act.

A family member or carer who is being consulted on the proposed restrictive practices is not considered to be involved in the “preparation or implementation” of the Behavioural Support Plan.

## Identifying a Restrictive Practices Substitute Decision-maker

The *Aged Care Restrictive Practice Substitute Decision-maker Act 2024* establishes a hierarchy of decision-makers who can consent to the use of restrictive practices.

#### Restrictive practices nominee:

A Restrictive Practices nominee is a person nominated by the aged care resident to be their restrictive practices substitute decision-maker in advance and in accordance with the requirements of section 5 of the Aged Care Restrictive Practice Substitute Decision-maker Act 2024.

An aged care resident can nominate someone they trust to be a Restrictive Practices Substitute Decision-maker. The nominee must agree to be the substitute decision-maker, and the nomination should be completed in advance and in writing.

The Restrictive Practices nominee’s appointment is enduring unless it is formally revoked in accordance with section 6 of theAged Care Restrictive Practice Substitute Decision-maker Act 2024 or the nominee is no longer reasonably available, willing and able to act as a decision-maker.

[**For more information see the Department of Health website**](https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care)

<https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care>:

* Factsheet 3: Tier 1 – Nomination of a Restrictive Practices Substitute Decision-maker
* Template Form: Nomination of a Restrictive Practices Substitute Decision-maker
* Template Form: Revocation of a Restrictive Practices Substitute Decision-maker Nominee

#### Temporary restrictive practices substitute decision-maker:

If there is no Restrictive Practices nominee or Restrictive Practices Substitute Decision-maker already appointed by VCAT in place, then a temporary Restrictive Practices Substitute Decision-maker can be appointed under section 8 of the Act.

A temporary decision-maker is identified based on their close and continuing relationship to the aged care resident.

A temporary decision-maker will be the first available, willing and able adult to make restrictive practices decisions on behalf of the aged care resident from the list below:

1. the spouse domestic partner of the aged care resident; or
2. the primary carer of the aged care resident; or
3. the oldest child of the aged care resident, followed by the other children in descending order of age if there are two or more adult children; or
4. the older parent of the aged care resident, followed by the younger parent; or
5. the oldest sibling of the aged care resident, followed by the other siblings of the aged care resident in descending order of age if there are two or more adult siblings.

The temporary decision-maker’s appointment is only in force for as long as there is a restrictive practices decision to be made (i.e., one instance of consent for a new or amended Behaviour Support Plan). Once a decision is made by the temporary Restrictive Practices Substitute Decision-maker, their appointment will cease.

If the restrictive practices decision has not yet been made, the temporary restrictive practices substitute decision maker’s appointment will cease if another appointment is made under the Aged Care Restrictive Practice Substitute Decision-maker Act 2024, a person who takes priority in the above list becomes reasonably available, willing and able to make the decision or the temporary restrictive practices substitute decision maker ceases to be reasonably available, willing and able to make the decision.

Providers will have to go through the hierarchy again to identify a substitute decision-maker for any future decisions, such as for new or changed use of restrictive practices.

Whilst it is likely the same person will be appointed as the Temporary Decision-maker each time, providers must work through the hierarchy from the beginning each time to ensure that consent is sought from the appropriate person each occasion.

**For more information see:**

* [Factsheet 4: Tier 2 – Temporary Restrictive Practices Substitute Decision-maker](https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care)

<https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care>

#### VCAT Appointee:

If there is no nominee or a temporary decision-maker, then a Restrictive Practices Substitute Decision-maker can be appointed by the Victorian Civil and Administrative Tribunal (VCAT) in accordance with the below requirements:

* The appointee must be someone known to the aged care resident and have an ongoing personal or professional relationship with the aged care resident.
* The prospective appointee must apply to VCAT to be appointed as the Restrictive Practices Substitute Decision-maker. They will need to satisfy VCAT that they meet the requirements to be appointed.

A VCAT-appointment may be indefinite or time limited. An appointment by VCAT can also be amended or revoked by a subsequent VCAT decision.

**For more information see:**

* [Factsheet 5: Tier 3 – VCAT - Appointed Restrictive Practices Substitute Decision-maker](https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care)
* <https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care>

#### VCAT as the decision maker:

As a last resort, VCAT can act as the decision-maker of last resort and, if appropriate, consent to the use of the restrictive practice in accordance with the below requirements:

* The provider must apply to VCAT where no-one else can be identified as a substitute decision-maker.
* The provider, in their application, must satisfy VCAT that there are no other potential decision-makers (nominees, or possible temporary or appointed decision-makers).
* VCAT must also be satisfied that the proposed use of restrictive practices is appropriate, including that the restrictive practice is used only as a last resort to prevent harm to the aged care resident or other persons.

**For more information see the factsheet:**[Factsheet 6: Tier 4 – VCAT as Restrictive Practices Substitute Decision-maker](https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care) <https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care>

## Dispute resolution and penalties

Attempts should be made to resolve disputes between parties before any escalation occurs.

If the issue cannot be resolved, VCAT has jurisdiction to uphold, set aside or appoint Restrictive Practices Substitute Decision-makers.

Complaints related to aged care providers, including concerns about care or inappropriate use of restrictive practices, can also be made to the aged care provider, or to the Aged Care Quality and Safety Commission:

* Free call between 9am and 5pm, Monday to Friday: 1800 951 822
* Email: info@agedcarequality.gov.au
* Website: [agedcarequality.gov.au/](https://www.agedcarequality.gov.au/)

## Additional information

[**Overview of Restrictive Practices**](https://www.agedcarequality.gov.au/resource-library/overview-restrictive-practices) **– Aged Care Quality and Safety Commission**

< https://www.agedcarequality.gov.au/resource-library/overview-restrictive-practices >

[**Minimising Restrictive Practices**](https://www.agedcarequality.gov.au/older-australians/safety-care/minimising-restrictive-practices) **– Aged Care Quality and Safety Commission**

< https://www.agedcarequality.gov.au/older-australians/safety-care/minimising-restrictive-practices >

[**Consent for Restrictive Practices – FAQs**](https://www.health.gov.au/resources/publications/consent-for-restrictive-practices-frequently-asked-questions) **– Commonwealth Department of Health, Disability and Ageing**

< https://www.health.gov.au/resources/publications/consent-for-restrictive-practices-frequently-asked-questions >

[**Restrictive Practices in Aged Care**](https://opan.org.au/toolkit/restrictive-practices-in-aged-care/) **– Older Persons Advocacy Network**

< https://opan.org.au/toolkit/restrictive-practices-in-aged-care/ >

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Available at [Department of Health – Substitute decision making and restrictive practice aged care](https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care)  <https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care>